

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of DEVON PAUL SHARP, SHANA
LEE SHARP, and ROBERT BOBBY JEAN
SHARP, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

PATRICIA SHARP,

Respondent-Appellant.

UNPUBLISHED

March 22, 2007

No. 271623

Emmet Circuit Court

Family Division

LC No. 05-005233-NA

Before: Zahra, P.J., and Bandstra and Owens, JJ.

MEMORANDUM.

Respondent appeals as of right from the trial court order terminating her parental rights to the minor children under MCL 712A.19b(3)(g) and (j). We affirm.

Respondent contends that the trial court erred when it failed to hold an adjudication hearing and relied on legally inadmissible evidence to support the termination of respondent's parental rights. We disagree. Our review of this issue is de novo. *In re CR*, 250 Mich App 185, 200; 646 NW2d 506 (2001); *Grzesick v Cepela*, 237 Mich App 554, 559; 603 NW2d 809 (1999). We conclude that the challenged evidence was based on properly admitted business records. MRE 803(6). Further, the evidence in question was based on records certified and admissible under MRE 902(4). *In re CR*, *supra* at 200; *Grzesick*, *supra* at 559. Accordingly, no error occurred.

Respondent also contends that she was denied the effective assistance of counsel. Because she did not move for a new trial or an evidentiary hearing, our review is limited to mistakes apparent on the record. *People v Natelle*, 215 Mich App 77, 87; 544 NW2d 667 (1996). To prevail on her claim, respondent must show that her trial counsel's performance was deficient and that there was a reasonable probability that, but for counsel's unprofessional errors, the result would have been different. *People v Hoag*, 460 Mich 1, 6; 594 NW2d 57 (1999); *People v Matuszak*, 263 Mich App 42, 57-58; 687 NW2d 342 (2004); *In re CR*, *supra* at 198.

Because the challenged evidence was admissible, it would have been futile for respondent's attorney to object to the admission of that evidence. *People v Thomas*, 260 Mich

App 450, 457; 678 NW2d 631 (2004). In addition, we find no merit to the claim that respondent's attorney was ineffective because he did not speak with respondent until the day before trial. Respondent contends that counsel could have learned of witnesses whose testimony may have changed the outcome of the trial, but she has not provided the names of those witnesses, or any proof, by affidavit or other means, showing what those witnesses would have contributed. She may not leave it to this Court to discover the factual basis for her position. *People v Traylor*, 245 Mich App 460, 464; 628 NW2d 120 (2001). In any event, it was respondent's own actions which prevented her attorney from contacting her until the day before trial. Respondent was thus not denied the effective assistance of counsel.

Affirmed.

/s/ Brian K. Zahra
/s/ Richard A. Bandstra
/s/ Donald S. Owens